



California Regional Water Quality Control Board

Colorado River Basin Region



Winston H. Hickox
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TO: Craig J. Wilson, Chief
Monitoring and TMDL Listing Unit
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

FROM: for *Doug Wylie*
Jose Angel, P/E.
Watershed Protection Division Chief
COLORADO RIVER BASIN REGION

DATE: May 23, 2002

SUBJECT: DELISTING THE NEW RIVER FOR NUTRIENTS FROM THE 303 (D) LIST

This letter provides you with additional information to support our recommendation and address State Board staff's concerns regarding the delisting of the New River for nutrients from the State's 303(d) List.

We understand that the State Board staff is concerned that no data are available on which to base delisting. The State Board staff's draft 303(d) report acknowledges that Region 7 has no data showing that nutrients are violating water quality standards in the New River, but notes that the River "...carries large amounts of nitrogen and phosphate which are causing eutrophic conditions [and] fish die-offs in the [Salton] Sea..." Consequently, State Board staff recommends keeping the River listed as impaired by nutrients because water quality conditions will need to be incorporated into the TMDL for Salton Sea. In the absence of documentation showing nutrients are actually violating water quality standards applicable to the River, we have concerns about the logical extent of the flawed rationale we used to list the River in the first place and the State Board staff's recommendation to keep the River listed based on the same premise. The following paragraphs elaborate on these issues.

1. Clean Water Act regulations address the standards for listing a water body. The listing requirements, we believe, must be pollutant, water quality standard(s), and surface water specific. That is to say, the requirement to list impaired water bodies applies only to "water quality limited segments." (40 C.F.R. §130.7.) A water quality limited segment means "[a]ny segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act." (40 CFR §130.2(j).) Where a surface water is being impaired by a particular pollutant, the impaired water has tributary surface waters which also carry the same pollutant, but the pollutant is not preventing the tributaries from achieving their applicable water quality standards, there is no requirement that we know of for listing the tributaries also as impaired just because they carry the impairing pollutant. The USEPA guidance for developing TMDLs also makes this clear, if one considers that the impairment many times is

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segment-specific. If this were not the case, for example, we would have to list the Colorado River, All American Canal, over 1500 miles of Imperial County agricultural drains, the Alamo River, the Coachella Valley Stormwater Channel, and San Felipe Creek as impaired by nutrients because they too carry nutrients even though the nutrients are not causing non-attainment of the their water quality standards. Similarly, we would also have to list the Colorado River, All American Canal, Coachella Valley Stormwater Channel, and New River as impaired by selenium because of the selenium impairments of the Salton Sea, even though we have no evidence of actual selenium impairments on these waterbodies. Further, we would have to list the Colorado River, All American Canal, all the drains in the Imperial Valley, all the drains in the Coachella Valley, the Coachella Valley Stormwater Channel, San Felipe Creek and so on (i.e., all of the Salton Sea tributaries) because they carry salts. The Salton Sea is 303(d) listed as impaired by salts, even though the salt levels in the tributaries meet the applicable water quality standards for salts in the tributaries.

2. Regarding de-listing requirements, a state must demonstrate good cause to de-list a water body. Good cause includes, without limitation, more recent or accurate data, or flaws in the data and information supporting the original listing analysis. (40 C.F.R. §130.7(b)(6)(iv), 130.7(b)(5).) The USEPA has interpreted this language to permit de-listing "if, upon re-examination, the original basis for listing is determined to be inaccurate." (USEPA, *National Clarifying Guidance For 1998 State and Territory Clean Water Act Section 303(d) Listing Decisions*, August 17, 1997, citing USEPA's *Guidance for 1994 Section 303(d) Lists* (November 26, 1993).) As we shared with you over the telephone on May 21, 2002, the Regional Board inaccurately listed the New River in 1998 because it carries nutrients, the nutrients contribute to the eutrophic conditions of the Salton Sea, and the eutrophic conditions are impacting the Sea's beneficial uses (e.g., fish die-offs, algal blooms that trigger low dissolved oxygen, etc.). Based on Item 1, above, the rationale is in itself flawed. If that is not enough, consider the following: While monitoring data collected by the Regional Board for the New River indicates that the River carries nutrients from Mexico and from Imperial County at relatively high concentrations (so does the Alamo River), the Region's Basin Plan has no numeric water quality objectives for nutrients for the River. In fact, it has no numeric WQOs for nutrients for any of our surface waters. It does have a narrative WQO that addresses biostimulatory substances and applies to the New River (i.e., a catch-all standard that calls for no biostimulatory substances at concentrations that impact the River's beneficial uses), but we have no data to support the contention that the nutrients in the River are impacting the River's beneficial uses. Typically, nutrient water quality impacts manifest themselves in algal blooms, nuisances (e.g., objectionable odors), and low dissolved oxygen conditions. While we have documented the latter two items as being present in the New River downstream of the International Boundary with Mexico, we have no evidence that they are caused by nutrients. In fact, the evidence we have clearly indicates that they are caused by the 5 to 20 million gallons of raw sewage that the River carries from Mexico on a daily basis. That is reflected in the recommended Regional Board 2002 list (see proposed listing for organic matter/low dissolved oxygen for the River).

In summary, the requirement to list impaired water bodies applies only to "water quality limited segments." (40 C.F.R. §130.7.) The available data and information demonstrate that the New River is tributary to a nutrient water quality limited segment (i.e., the Salton Sea). However, the New River is not itself a nutrient water quality limited segment, since no data or information demonstrate that water quality in the New River fails to meet water quality standards (i.e., we

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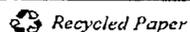
erroneously recommended listing the River as impaired by nutrients in 1998). Therefore, we urge the State Board staff to support the Regional Board's recommendation to de-list the New River for nutrients.

Thank you for your consideration, and please call Doug Wylie at (760) 346-6585 if you have questions on the matter.

cc: Lori Okun, OCC
Doug Wylie

File: 303(d) List

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PALO VERDE IRRIGATION DISTRICT

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May 29, 2002

Craig J. Wilson, Chief
Monitoring and TMDL Listing Unit
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State Water Resources Control Board
P.O. Box 100
Sacramento, Ca. 95812-0100

Re: Comment 303 (d) list

Dear Mr. Wilson:

The Staff Report on "Revision of the Clean Water Act Section 303 (d) List of Water Quality Limited Segments", Volumes I and III, Draft of April 2002 by State Water Resources Control Board (Board) proposes to list Palo Verde Irrigation District's Outfall Drain for Bacteria (pathogen) problems. In the Staff Report Volume III, page 7-13, Staff lists "Potential Source of Pollutant" as "5-20 million gallons per day of raw sewage from Mexico discharged to New River" and "Alternative Enforceable Program" as "Mexican - American Water Treaty." Both are wrong. PVID's Outfall Drain is about 95 Colorado River miles north of the Mexican border, it does not connect to New River, and I am not aware of it being covered by that treaty. If data from New River was used to place PVID's Outfall Drain on this 303 (d) list, then PVID's Outfall Drain status should be reevaluated.

PVID is concerned about how the beneficial use definitions used to make the 303 (d) listing are being refined to establish the reported beneficial uses for PVID's canals and drains. The beneficial use categories provided in the Region 7 Basin Plan, as currently written, are overly broad and do not accurately or adequately reflect the characteristics of PVID'S canals or agricultural drains (including PVID's Outfall Drain) as they existed when beneficial uses were first designated. Agricultural drains in the Palo Verde Valley are man made waterways constructed and maintained to convey agricultural drainage water. PVID believes it is inappropriate to designate constructed waterways dominated by agricultural drainage as REC 1 water bodies and as being comparable to natural freshwater streams. Despite the regulatory prohibition against designating the conveyance of agricultural drainage water as a beneficial use, the source and type of water to be conveyed by the waterways should still be considered in designating the beneficial uses of agricultural drains. The source and type of water should be taken into consideration when defining the associated water quality objectives. Where agricultural drainage provides the water necessary to sustain life in the drains, the level of protection by beneficial use designations should bear a rational relationship to the quality of water which initially created the aquatic habitat and the types of aquatic life that exist in these waters. PVID requests a more suitable and consistent list of beneficial uses be developed along with water quality objectives and an implementation process that is appropriate for agricultural drains which

does not undermine the intended purpose of the drains.

The current beneficial uses recognized in the Region 7 Basin Plan for: PVID's canals are MUN, AGR, AQUA, GWR, REC I, REC II, WARM, and WILD; and for PVID's agricultural drains including PVID's Outfall Drain are REC I, REC II, WARM, WILD, and for PVID's Outfall Drain and Palo Verde Lagoon, RARE. Imperial Irrigation District's letter of October 29, 2001 to Mr. Rokke of Region 7 of your agency makes the point that the WARM designation "actually means 'Warm Freshwater Habitat'. Under the U.S. Fish and Wildlife Service's Handbook for habitat classification, the term 'freshwater' means having a total dissolved solids (TDS) of less than 500 parts per million (ppm)." Water entering our canal system from the Colorado River has a TDS exceeding 530 ppm (1941 to present based on Table 19a of USDI Progress Report #18 Quality of Water, Colorado River Basin). Water in our agricultural drains has TDS values ranging from 1,200 to 2,460 ppm (samples taken 1/8 - 2002). Thus the designation "WARM" does not fit PVID's canals or drains.

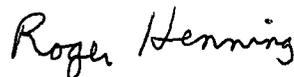
Our request for modification of beneficial use definitions is for the terms to more closely reflect the existing uses for these canals and drains. Our request is not intended to diminish water quality.

PVID's canals and especially its agricultural drains are unique in that they do not have the hydrologic and ecological characteristics and water qualities necessary for full attainment of beneficial uses normally associated with natural streams. The requested modified uses and their definitions would not undermine incidental uses but would facilitate appropriate management activities while protecting designated uses. By considering and adopting appropriate changes to the beneficial use designations, the Board is acknowledging the real world limitations on the waters of this area and will allow the regulated communities to work toward the desired water quality goals necessary to protect and preserve existing beneficial uses.

PVID also requests the Board to re-examine the water quality objectives applicable to PVID's canals and drains and establish separate water quality objectives appropriate for these waters. In establishing and applying these water quality objectives to agricultural waters, PVID requests the Board to develop new water quality objectives based on local species and ambient conditions, or, as an alternative, use the lowest mean acute value of toxicity tests.

PVID thanks you for the opportunity to comment on these issues.

Sincerely,



Roger Henning
Chief Engineer

REH:bmm



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TO: Craig J. Wilson, Chief
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 Division of Water Quality
 State Water Resources Control Board
 P.O. Box 100
 Sacramento, CA 95812-0100

FROM: for *Doug Wylie*
 Jose Angel, P.E.
 Watershed Protection Division Chief
COLORADO RIVER BASIN REGION

DATE: May 31, 2002

SUBJECT: DELISTING THE NEW RIVER FOR NUTRIENTS FROM THE 303 (D) LIST

This memorandum follows up on our letter addressed to you and dated May 22, 2002. Our letter provided you with our detailed rationale to de-list the New River as impaired by nutrients from the 303(d) List.

To sum up our argument, Region 7 improperly listed the New River as impaired by nutrients in 1998. The Regional Board has no data to substantiate that nutrients are violating the River's water quality standards. The New River carries about 5 to 20 million gallons per day of raw sewage from Mexico. Although, the raw sewage has relatively high concentrations of nitrate and phosphates, the Regional Board has no numeric standards for nitrate, phosphate, or other biostimulatory substances for the River; or evidence that the nutrients are actually impairing the River's beneficial uses. Further, the Regional Board's recommended 303(d) List for 2002 already identifies raw sewage as impairing the River's dissolved oxygen water quality objective and beneficial uses.

I trust this address your concerns and provides you with information you needed to make a favorable recommendation to de-list the River. Thank you for your considerations and please call Doug Wylie or Nadim Zeywar if you have questions on the matter.

cc: Lori Okun, OCC

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